

the dispute and be advised as to whether such parties agree to participate in the conciliation. If the other party or parties to the dispute do not agree to the Conciliation Service, no further action will be taken by the conciliator and the conciliation ceases.

(d) The parties will be free to determine the best procedures to be used with the qualification that the conciliator may disapprove procedures that would in his or her opinion be either too time-consuming or involve inordinate expense to the Federal Maritime Commission. The parties may agree to (1) fix a time and place for the oral presentation of each party's contention; and (2) request affidavits, documents, or other materials that could help resolve the dispute. The conciliator will be in a strictly advisory capacity. There will be no written record of the conciliation discussions.

(e) Participation in the conciliation of a dispute is purely voluntary at all stages and the parties involved may withdraw at any time without prejudice. [Rule 404.]

[49 FR 44369, Nov. 6, 1984, as amended at 59 FR 59170, Nov. 16, 1994; 63 FR 50535, Sept. 22, 1998]

EFFECTIVE DATE NOTE: At 63 FR 50535, Sept. 22, 1998, the last sentence of § 502.404(a) was revised, effective Nov. 2, 1998. For the convenience of the user, the superseded text is set forth as follows:

**§ 502.404 Procedure and fee.**

(a) \* \* \* The request shall be accompanied by remittance of a \$61 service fee.

\* \* \* \* \*

**§ 502.405 Assignment of conciliator.**

The Secretary of the Commission, giving due regard to the type and complexity of the problem presented and the degree of expertise required, will assign a conciliator to each dispute. [Rule 405.]

**§ 502.406 Advisory opinion.**

(a) The conciliator will write an advisory opinion that must meet the approval of all parties. If the advisory opinion, or revision thereof requested by one or more of the parties, is not unanimously agreed upon, then the conciliation will cease, without preju-

dice to any of the parties involved. If unanimity is not reached, the conciliator will note in a report to the Commission, which shall be served on all parties, that the parties failed to reach agreement. Only if unanimity is reached will the informal advisory opinion, although not binding, be sent to all interested parties and be made available to the public.

(b) There will be no appeal from, or review of, such opinions and any party may pursue any further course of action under any other rule or statute that it deems advisable. [Rule 406.]

**Subpart V—Implementation of the Equal Access to Justice Act in Commission Proceedings**

SOURCE: 52 FR 28264, July 29, 1987, unless otherwise noted.

**§ 502.501 General provisions.**

(a) *Purpose.* The Equal Access to Justice Act, 5 U.S.C. 504 ("EAJA"), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Federal Maritime Commission ("the Commission"). An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

(b) *When EAJA applies.* EAJA applies to any adversary adjudication:

(1) Pending or commenced before the Commission on or after August 5, 1985;

(2) Commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in § 502.502 of this subpart, has been filed with the Commission within 30 days after August 5, 1985; or

(3) Pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.